

UNITED STATES FEDERAL COMMUNICATIONS COMMISSION

In the Matter of:	)	EB DOCKET NO.: 02-21
)	
PENINSULA COMMUNICATIONS, INC.	)	File No. EB 01-IH-0609
	)	FRN: 001-5712-15
Licensee of stations)	
KGTL, Homer, Alaska;	)	Facility ID Nos. 52152
KXBA (FM) Nikiski, Alaska;	)	86717
KWVW-FM, Homer, Alaska; and	)	52145
KPEN-FM, Soldotna, Alaska.	)	52149
)	
Licensee of FM translator stations)	
K292ED, Kachemak City, Alaska;	)	52150
K285DU, Homer, Alaska;	)	52157
K285EG and K272DG, Seward, Alaska.	)	52158 and 52160
)	
Former licensee of FM translator)	
stations)	
K28F3F, Kenai, Alaska;)	
K283AB, Kenai/Soldotna, Alaska;)	
K257DB, Anchor Point, Alaska;)	
K265CK, Kachemak City, Alaska;)	
K272CN, Homer, Alaska; and)	
K274AB and K285AA, Kodiak, Alaska)	

Volume: 5

Pages: 625 through 657

Place: Washington, D.C.

Date: October 16, 2002

FCC-0ALJ RCD
NOV 1 1 53 PM '02

HERITAGE REPORTING CORPORATION

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Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

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Federal Communications
Commission
445 12th Street, S.W.
Washington, D.C.

Wednesday,
October 16, 2002

The parties met, pursuant to the notice of the
Judge, at 10:25 a.m.

BEFORE: HONORABLE RICHARD L. SIPPEL
Chief Administrative Law Judge

Heritage Reporting Corporation
(202) 628-4888

APPEARANCES:

On behalf of Peninsula Communications, Inc.:

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On behalf of the Federal Communications
Commission:

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E X H I B I T S

<u>PCI</u> <u>EXHIBITS</u>	<u>IDENTIFIED</u>	<u>RECEIVED</u>	<u>REJECTED</u>
4	629	634	
5	634	648	
6	648	649	
7	650	650	
8	651	652	
9	Prev.	652	

P R O C E E D I N G S

(10:25 a.m.)

JUDGE SIPPEL: We are here today to receive into evidence some additional documentary items that Peninsula is prepared to proffer. We'll rule on those and see where we go.

Mr. Southmayd, do you want to proceed, sir?

MR. SOUTHMAYD: Good morning, Your Honor.

JUDGE SIPPEL: Good morning.

MR. SOUTHMAYD: I would propose to give the court reporter two copies of my proposed exhibits and then perhaps go through each one and identify it, however Your Honor would like to handle that.

JUDGE SIPPEL: I'd like it to be done very carefully. There aren't that many of them. Just be sure you identify for the record each exhibit as you're getting ready to move it in. Identify it by terms of the nature of the document, describing it, and then the number of pages. You make your notion, Mr. Shook either objects or doesn't object, and we go from there.

MR. SOUTHMAYD: Thank you, Your Honor.

JUDGE SIPPEL: Thank you.

MR. SOUTHMAYD: I'm going to hand the court reporter two copies of Peninsula's proposed exhibits labeled 4 through 9.

Exhibit 4 is a 52-page exhibit concerning various applications filed in connection with FM translator K272CN, Homer, Alaska.

JUDGE SIPPEL: The reporter will then mark that for identification as Peninsula No. 4.

(The document referred to was marked for identification as PCI Exhibit No. 4.)

JUDGE SIPPEL: Do you have that marked?

THE REPORTER: Yes, sir.

JUDGE SIPPEL: Take your time. Let us know when you're ready to go

THE REPORTER: I'm ready to go.

JUDGE SIPPEL: Okay. I take it you're moving that into evidence, Mr. Southrnayd?

MR. SOUTHMAYD: Yes, Your Honor. Thank you

JUDGE SIPPEL: Is there any objection?

MR. SHOOK: Your Honor, I would point out that PCI-4, pages 3 through 20, appear to duplicate Enforcement Bureau Exhibit 3, pages 25 through 42.

JUDGE SIPPEL: Okay. Is that an observation, or is that an objection? What do I do with that piece of information?

MR. SHOOK: Well, Your Honor, it would seem to me that it's unnecessary to have this additional material, so

1 to that extent I would object.

2 JUDGE SIPPEL: Thank you. Mr. Southrnayd?

3 MR. SOUTHMAYD: Frankly, Your Honor, I didn't
4 realize it was duplicative. I thought it was supplemental
5 To the extent it is duplicative of what's already in EB
6 Exhibit 3, pages 25 through 42, we would have no need for
7 it.

8 JUDGE SIPPEL: All right. What are the page
9 numbers?

10 MR. SHOOK: PCI pages 3 through 20.

11 JUDGE SIPPEL: Okay. These pages are in a
12 notebook, so what I would do is leave page 3 in because it's
13 a cover letter and just take out pages 4 through 20. Then
14 it would pick up with page 21, which is the new material
15 Is that correct?

16 MR. SHOOK: The cover letter also duplicates a
17 cover letter that is in the EB exhibit.

18 JUDGE SIPPEL: Well, then what we can do is **we** can
19 just take out everything and start with page 21. This
20 exhibit will run from pages 21 to 52.

21 MR. SOUTHMAYD: Your Honor, I think pages 1 and 2
22 aren't duplicative.

23 MR. SHOOK: Correct. Page 1 and 2 we have no
24 objection to

25 JUDGE SIPPEL: I'm sorry. All right. Pages 1 and

2 will stay in, and pages 3 through 20 come out. Are we
2 agreed on that?

3 MR. SOUTHMAYD: Yes.

4 MR. SHOOK: Yes, sir.

5 JUDGE SIPPEL: All right. Let's go off the record
6 so the court reporter can remove the pages.

7 (Whereupon, a short recess was taken.)

8 JUDGE SIPPEL: All right. We're back on the
9 record. I haven't really ruled on this, but I am granting
10 the motion as modified, and I'm receiving into evidence
11 PCI's Exhibit No. 4, which includes --

12 MR. SHOOK: Your Honor, I hadn't finished.

13 JUDGE SIPPEL: I'm sorry. All right. Go right
14 ahead. I'm sorry, Mr. Shook.

15 MR. SHOOK: Your Honor, I guess what I have is a
16 relevance objection to pages 21 and 22 because to the extent
17 that it pertains to a construction permit we do have a
18 construction permit in the record for this particular
19 facility, which appears at EB Exhibit page 23.

20 If you would note in looking at proposed PCI pages
21 21 and 22 of its Exhibit 4, it appears to be some
22 interesting compilation of information. I recognize that
23 the information probably came from something generated by
24 the Commission, and yet it is, as I said, a strange
25 compilation because it refers to Dennis Williams as the

1 authorizing official for this particular construction
2 permit.

3 Now, Mr. Williams left the agency a number of
4 years ago, and you will note that there's a reference to a
5 change in the Commission rules that took place on
6 February 16, 1999. You'll notice that in the paragraph that
7 appears on page 21.

8 JUDGE SIPPEL: I have a 1998 reference. I can't
9 find a 1999 reference.

10 MR. SHOOK: Well, it says Commission rules, which
11 became effective on February 16, 1999.

12 JUDGE SIPPEL: Yes. I see that now. Yes, I do.

13 MR. SHOOK: Anyway, Mr. Williams had long since
14 departed by that time.

15 The form itself, in any event, is unsigned.
16 There's no grant date. I just don't see that this assists
17 us in any way.

18 JUDGE SIPPEL: Mr. Southmayd?

19 MR. SOUTHMAYD: Well, this came out of the
20 commission's records. I can't explain those points, which
21 are obviously very relevant, myself. I guess to the extent
22 it's already in the record I assume in another form there's
23 probably no need for this.

24 JUDGE SIPPEL: Well, yes. There's obviously a
25 serious question of reliability based on what Mr. Shook

said. What I'm going to do then is I'm going to exclude
2 pages 21 and 22. Is that right?

3 MR. SHOOK: Yes, sir.

4 JUDGE SIPPEL: I'm just going to take those out
5 the same way we did with the others, but before we go off
6 the record to mechanically do this are there any other
7 objections?

8 MR. SHOOK: There is one final objection, and that
9 would be to pages 48 through 52. Again, they duplicate
10 materials that are in EB Exhibit 3, pages 20 through 24.

11 JUDGE SIPPEL: Mr. Southmayd?

12 MR. SOUTHMAYD: To the extent that's true, Your
13 Honor, we would agree that it's superfluous to have them in
14 this exhibit as well.

15 JUDGE SIPPEL: Pages 48 through 52 are also coming
16 out, which leaves the exhibit that's being offered as pages
17 1 and 2, and this is Exhibit 4 now for identification, and
18 then pages 23 through 47. Is that correct?

19 MR. SHOOK: Yes.

20 MR. SOUTHMAYD: Yes.

21 JUDGE SIPPEL: All right. Are there any other
22 objections to this exhibit?

23 MR. SHOOK: Not to PCI 4.

24 JUDGE SIPPEL: okay. Subject to the rulings as
25 made, Exhibit 4 is received in evidence as PCI Exhibit 4, it

1 having pages numbered 1 and 2 and pages numbered 23 through
2 47.

3 The rest of the materials that were in the exhibit
4 have been removed and are excluded.

5 (The document referred to,
6 previously identified as PCI
7 Exhibit No. 4, was received in
8 evidence.)

9 JUDGE SIPPEL: Why don't we go off the record so
10 the reporter's copy gets modified?

11 (Whereupon, a short recess was taken.)

12 JUDGE SIPPEL: All right. Are we all set, Mr.
13 Southmayd, to proceed?

14 MR. SOUTHMAYD: Yes, sir.

15 JUDGE SIPPEL: Okay. Your next exhibit then?

16 MR. SOUTHMAYD: The next exhibit I'd like marked
17 and identified as PCI Exhibit 5. It is an 18 page document
18 concerning FM translator K274AB, Kodiak, Alaska.

19 (The document referred to was
20 marked for identification as
21 PCI Exhibit No. 5.)

22 MR. SOUTHMAYD: I ask that it be moved into
23 evidence.

24 JUDGE SIPPEL: What is it? Is this an
25 application? What does it relate to?

MR. SOUTHMAYD: They are materials from the
2 license file for the translator concerning a request for
3 special temporary authority to operate the translator filed
4 in 1558, the Commission record on action taken on the STA
5 request and a pleading filed by Cobb Communications, Inc.,
6 in opposition to the approval of the STA for the translator.

7 JUDGE SIPPEL: And is there any objection from the
8 Bureau with respect to any of those materials?

9 MR. SHOOK: Yes, sir. With respect to pages 3 and
10 4, they duplicate, as far as I can tell, pages 6 and 7.
11 It's the same letter submitted twice.

12 JUDGE SIPPEL: All right. Let me ask Mr.
13 Southmayd about that. Is that an oversight, or is that
14 there for a purpose?

15 MR. SOUTHMAYD: No. It appears to be true. This
16 is a copy of the request that was filed. It may have been
17 filed that way, but I have no objection to taking out the
18 duplicative copies, pages 3 and 4.

19 JUDGE SIPPEL: Okay. So it would be better off
20 leaving 6 and 7 and taking out 3 and 4 --

21 MR. SOUTHMAYD: I think so.

22 JUDGE SIPPEL: -- in terms of the order of
23 presentation? All right.

24 That request will be granted. Pages 3 and 4 are
25 removed from what has been marked for identification as PCI

1 Exhibit 5.

2 Let's finish with the exhibit before we work with
3 the reporter on this. Any other objection?

4 MR. SHOOK: Your Honor, I do have an objection to
5 page 14. The problem that I have is I have not been able to
6 verify the information that is suggested here in any other
7 place at the Agency.

8 For example, ordinarily when a special temporary
9 authorization or special temporary authority is granted
10 there is a letter or a telegram or something that is signed
11 by an official at the Commission to reflect what authority
12 was actually granted. I have not been able to locate that
13 anywhere else in the Agency.

14 This particular document is not signed by anybody.
15 For all we know, it reflects a data entry from a clerk who
16 didn't know what he was doing.

17 JUDGE SIPPEL: It reflects that special temporary
18 authority was granted on December 10, 1998.

19 MR. SHOOK: Now, I may withdraw that objection if
20 I have a better understanding of what authority is actually
21 being given here.

22 If what this purports to represent is the
23 authority for that translator to have remained silent up
24 until a certain period of time, that I have no problem with.
25 If it's authority for something else, I do have a problem

with it because I can't ascertain what authority was
2 actually granted.

3 JUDGE SIPPEL: Okay. Can you shed any light on
4 that, Mr. Southmayd?

5 MR. SOUTHMAYD: On page 5 of the exhibit, this is
6 a receipt stamped copy of the fee form filed at the Mellon
7 Bank, as it says at the top, on August 27, 1998. This is
8 the fee form that accompanied the special temporary
9 authority request behind the cover letter dated August 26,
10 1998. It's right behind the fee form, page 6.

11 JUDGE SIPPEL: I see it.

12 MR. SOUTHMAYD: Okay.

13 JUDGE SIPPEL: It starts out by saying you
14 respectfully request special temporary authority to operate
15 translator station K272AB.

16 MR. SOUTHMAYD: Correct. Filed August 27, 1998.
17 The record from the Commission's database references in the
18 file number STA19980827W4 and the call letter of the
19 translator for which the STA request was filed on that date,
20 August 27, 1998, so this record on page 14 relates to the
21 filing memorialized in pages 5 through 13.

22 JUDGE SIPPEL: I do see in the second paragraph of
23 this letter of August 26 -- anyway, the letter of August 26
24 does identify FM translator K274AB, which does coincide with
25 the translator identified certainly in this questionable

1 document that we're referring to, which appears to have
2 granted the temporary authority. I'm looking for it on,
3 yes, page 5 also in Item 12-A.

4 Is there enough of a tie-in there in those three
5 places to satisfy the Bureau?

6 MR. SHOOK: Your Honor, I would point out that the
7 authority apparently given by this document on PCI 5, page
8 14, is flatly inconsistent with what the Commission ruled on
9 the very same day of this purported grant, that being
10 December 10, 1998, when the Commission denied the waiver
11 request that Coastal Broadcast Communications had submitted
12 in order to allow the Kodiak translator licenses to be
13 modified to use an alternative delivery method for the
14 signals of KPEN and KVVV.

15 In the Commission's Order, which is one of the
16 Official Notice exhibits, and I don't have that number at my
17 fingertips at the moment. I believe it's Official Notice
18 Exhibit 6. In that document the Commission denied the
19 modification applications, finding that the waiver requests
20 were inappropriate.

21 The apparent action of the staff relative to the
22 special temporary authority request is just flatly
23 inconsistent with the Commission's decision.

24 MR. SOUTHMAYD: Your Honor?

25 JUDGE SIPPEL: Yes?

1 MR. SOUTHMAYD: The Commission's decision did not
2 deny the special temporary authority request by Peninsula.
3 It may have denied Coastal's, the proposed assignee's,
4 application for permanent modification, but there's nothing
5 in the Order denying this STA. In fact, as this record
6 shows, the STA was apparently approved by the staff.

7 JUDGE SIPPEL: All right. I'm trying to follow
8 this. I know Mr. Shook wasn't absolutely sure on this, but
9 I'm checking. I'm looking at my Official Notice Exhibit No.
10 8, and that's a letter dated September of 1996.

11 MR. SHOOK: Then it's not that exhibit. It would
12 be the Commission Order that was released December 10, 1998,
13 so that's a later exhibit, It could be Official Notice 10
14 or 11.

15 JUDGE SIPPEL: I have it here. Let me give you
16 the number. I have it. It's 11.

17 MR. SHOOK: It's 11? Okay.

18 JUDGE SIPPEL: Memorandum and Order released
19 December 10, 1998.

20 MR. SHOOK: Now, I will say this. I agree with
21 Mr. Southmayd to the extent that the December 10 Order of
22 the Commission did not address the special temporary
23 authority request that had been made by PCI, so it is
24 conceivable that the staff took action relative to that
25 document because no such action was taken by the Commission.

1 I would point out, however, that the actions
2 involved seek the same end; that is, the use of alternative
3 delivery methods for the signal to be delivered to the
4 translators in Kodiak, and that the Commission action
5 denying it and explaining why it was denied would be flatly
6 inconsistent with any staff action granting such special
7 temporary authority.

8 The other thing I would point out is that again
9 when special temporary authority is granted there are
10 several things that in the ordinary course take place. One
11 is either a letter or a telegram from the staff so that
12 there is an identified individual who is granting the
13 authority, and then the second thing is there would be a
14 date certain placed on the end of that authority.

15 Here there's no indication of when that authority
16 is supposed to end. By rule, special temporary authority is
17 to last only for 90 days, and there are certain standards
18 that have to be met in order for it to continue. I'm just
19 saying in terms of being able to make sense out of what
20 happened here, I do not see that this is a reliable enough
21 document to allow any finding or argument to the effect that
22 a grant of special temporary authority occurred.

23 MR. SOUTHMAYD: Your Honor, if I could be heard?

24 JUDGE SIPPEL: Yes, Mr. Southmayd? Please.

25 MR. SOUTHMAYD: I mean, it's in the Commission's

1 database and records as we sit here this morning granting
2 this special temporary authority. It's my recollection, and
3 I have not seen a transcript, that Mr. Becker was cross
4 examined on the operation of the Kodiak translators pursuant
5 to the facilities requested in this special temporary
6 authority

7 I think it's very relevant and important to our
8 case to show that even arguably if the staff erroneously or
9 otherwise approved it, they indeed approved it. There's a
10 record here that the STA was approved for Mr. Becker to
11 operate his Kodiak translator in the manner requested in
12 this STA.

13 Now, I can't explain, and I would note for the
14 record I don't have any letter either. Had I one, I would
15 have produced it instead of this, but this clearly shows
16 that this STA filed August 27, 1998, for this translator was
17 granted on December 10, 1998.

18 JUDGE SIPPEL: And this document you obtained from
19 you say the FCC's database?

20 MR. SOUTHMAYD: It's in the FCC's records now this
21 morning as we speak.

22 JUDGE SIPPEL: Do you have anything to the
23 contrary on that, Mr. Shook?

24 MR. SHOOK: No, sir. I mean, obviously the
25 document itself appears to be a document that would be

1 derived from the FCC's database. My problem here is that
2 there's no underlying supporting document that would show
3 that a staff action of this nature actually took place.

4 JUDGE SIPPEL: Right. I understand.

5 MR. SHOOK: The other thing about it is that there
6 was nothing in the record of testimony taken to reflect that
7 Mr. Becker had received this notification or had otherwise
8 acted on it.

9 JUDGE SIPPEL: I'm not sure what the transcript
10 will reflect. Do you take any position on that, Mr.
11 Southmayd, as far as with respect to --

12 MR. SOUTHMAYD: Only that I think what we've
13 established here is the best evidence. There's no question
14 that this STA request was filed with the Commission.
15 Presumably some action was taken. The only record that we
16 have of any action taken is this grant.

17 JUDGE SIPPEL: Action being either granted or
18 denied?

19 MR. SOUTHMAYD: Correct.

20 JUDGE SIPPEL: The only thing that we have is
21 apparently an incomplete record that shows that it was
22 granted.

23 MR. SOUTHMAYD: Correct. It indicates it was
24 granted December 10, 1998.

25 To the extent that the underlying application is

1 put in and subject to, and I would not have a problem with,
2 giving the Bureau an opportunity to submit something to the
3 contrary to show that in fact it has been denied, hut in
4 fact the Commission's records, all the records that exist,
5 shew it was granted. Unfortunately, as far as I can tell,
6 this is the only record that has survived.

7 I would note one other thing if I could, Your
8 Honor. You'll note on this record that the call sign is
9 DK274AB.

10 JUDGE SIPPEL: Yes.

11 MR. SOUTHMAYD: That reflects, and counsel can
12 correct me if I'm wrong, that the call sign for this
13 facility has been deleted by the Commission staff.

14 In fact, when the Commission acted in its most
15 recent report and Order in May of 2001 and denied Mr.
16 Becker's license renewal, they deleted wholesale records on
17 all his translators. The only way you can even find,
18 fortunately, records on them is to go into the Commission's
19 database under Deleted Stations because, thank God, when
20 they delete them a record does continue to exist if you're
21 smart enough to look under the deleted record.

22 I have no idea what other records were summarily
23 deleted by the Commission and aren't available here, and I
24 don't think that the Commission's action in deleting records
25 should be held against us when this is the best evidence we

1 have, though no fault of our own, of the action taken.
Clearly it was approved.

3 JUDGE SIPPEL: Did you locate this document in the
4 deleted file section?

5 MR. SOUTHMAYD: Yes, sir.

6 JUDGE SIPPEL: That's where you went?

7 MR. SOUTHMAYD: Yes, sir. If you **look** under the
8 call sign K274AB, it shows it's been deleted. There are no
9 records. You can get into the deleted records, which is
10 what this is, still in the Commission's database and
11 available for anyone to look at that shows that indeed this
12 special temporary authority was granted December 10, 1998.
13 There's no other record I'm aware of that exists at this
14 point.

15 JUDGE SIPPEL: Do you have anything more to add **to**
16 this, Mr. Shook?

17 MR. SHOOK: Mr. Southmayd raises an interesting
18 point that I should have picked up on myself, but didn't.
19 That is that because the call sign on this file is reflected
20 here as a D, which does mean deleted, the record itself
21 could not have been prepared until sometime after May 18,
22 2001, which was when the Order of the Commission was issued
23 that actually in fact deleted the call sign.

24 To the extent that this is reflecting a deleted
25 call sign but it references an action that took place in

1 1998, I think there just are some inherent reliability
2 problems here that cannot be solved by simply pointing to
3 this document as being the only document that exists
4 relative to a possible staff action on those special
5 temporary authority requests.

6 JUDGE SIPPEL: Well, what could it mean? I mean,
7 this is a document that's coming out of the Commission's
8 file, so it's not something that was concocted. It shows,
9 as you point out, a deleted call sign, which is the D before
10 the K27, et cetera, correct?

11 MR. SHOOK: Correct.

12 JUDGE SIPPEL: Assuming the proper procedures were
13 followed, that D could not appear there until sometime after
14 May of 2001, so the document, in the course of its
15 preparation or its appearance, presumably was on or after
16 May of 2001.

17 The next question would be I don't see anything on
18 the document that reflects that, but this is all just
19 rationalizing to it. The fact remains that it shows a
20 temporary authority, a special temporary authority, granted
21 back in December of 1998.

22 I don't know. There's nothing inherently
23 inconsistent about that, is there? If there was in fact an
24 earlier STA granted and this document was -- I don't **know**
25 what this would be called, but it's some kind of a history

1 of that translator station that was published in connection
2 with the deletion

3 What I'm looking for is I'm groping for some
4 reason as to either, A, reject this in entirety or accept it
5 in its entirety. I'm having trouble with that.

6 MR. SHOOK: If I could be heard?

7 JUDGE SIPPEL: Yes.

8 MR. SHOOK: It's my understanding that the
9 Commission has a record that's generated when an action is
10 taken, but when it deletes the record the only thing the
11 Commission does is puts a D in front of all the records for
12 that station, and they go into the deleted station database.

13 When the Commission deleted all of Peninsula's
14 records for these translators, someone put a D in front of a
15 call sign that existed at that time, no matter when the
16 record was generated, and it went into this deleted
17 database.

18 This would not indicate the record was created
19 after the May, 2001, Order. It would just indicate that it
20 was deleted after the May, 2001, Order, but indeed could
21 have indeed existed prior to that as just a K27AB grant.
22 Then when the Commission decided in the summer of 2001 to
23 delete all the records they put a D in front of it, and it
24 went in as the deleted section of the Commission's records.

25 It wasn't generated originally at that point. I

think it speaks for itself on the date the application was
accepted and the date it was disposed of and the date it was
granted, and I don't think it's inconsistent with the D that
was subsequently added to the call sign.

JUDGE SIPPEL: Well, I mean, that's another
perhaps plausible explanation to add to the other plausible
explanations that we have.

Do you want to offer anything more on this, Mr.
Shook?

MR. SHOOK: No. I would simply be repeating
myself at this point.

JUDGE SIPPEL: Well, I'm going to rule on this
now. I mean, I've heard enough. I'm not satisfied that I
really know what I would like to know about this document,
but since it does come *from* a Commission file and
constitutes a Commission business record, if even only
partial, I'm going to receive it into evidence subject, of
course, to what weight to ascribe to it.

The record will be left open until the date that
you file proposed findings in the event that a clarifying
document somehow or other is obtained. I think that's all I
can do with it right now.

That being my ruling, let me go back again and
review what's coming in on this. Are there any other pages
of proposed Exhibit 5 that we need to discuss?

1 MR. SHOOK: No, sir.

2 JUDGE SIPPEL: All right. What is received in
3 evidence at this time, subject to these rules, is PCI
4 Exhibit 5 with pages 1 and 2 and then pages 5 through 18.
5 Is that correct?

6 MR. SOUTHMAYD: Yes, sir.

7 MR. SHOOK: Yes, sir.

8 JUDGE SIPPEL: Pages 1 and 2 and 5 through 18.
9 Everything else is rejected, and the reporter will so
10 indicate. We'll go off the record while Mr. Southmayd gives
11 the reporter the deleted copy.

12 (Whereupon, a short recess was taken.)

13 (The document referred to,
14 previously identified as PCI
15 Exhibit No. 5, was received in
16 evidence.)

17 JUDGE SIPPEL: We're back on the record. Mr.
18 Southmayd has coordinated the copies that are now with the
19 reporter to reflect these changes to Exhibit 5.

20 We now can move on to the next proposed exhibit
21 for PCI, which would be No. 6 for identification.

22 (The document referred to was
23 marked for identification as
24 PCI Exhibit No. 6.)

25 JUDGE SIPPEL: Would you identify that one for the

1 record, please?

2 MR. SOUTHMAYD: Yes, Your Honor. PCI's proposed
3 Exhibit 6 is a 75-page document involving Peninsula's
4 translator serving Kenai and Soldotna, Alaska, K265BJ

5 JUDGE SIPPEL: K265B like in boy?

6 MR. SOUTHMAYD: J as in John.

7 JUDGE SIPPEL: As in John. All right. That's
8 been marked for identification as PCI Exhibit No. 6.
9 Objections, Mr. Shook?

10 MR. SHOOK: Only to page 1 as it duplicates EB
11 Exhibit 29.

12 MR. SOUTHMAYD: I think that's right now that I
13 see it, Your Honor.

14 JUDGE SIPPEL: All right. We'll remove page 1 of
15 proposed Exhibit 6, so then the pages will be from numbered
16 2 through 75.

17 As indicated, that document is received in
18 evidence at this time as PCI Exhibit No. 6. If you would
19 just assist the reporter?

20 (The document referred to,
21 previously identified as PCI
22 Exhibit No. 6, was received in
23 evidence.)

24 JUDGE SIPPEL: Your next exhibit, Mr. Southmayd?

25 MR. SOUTHMAYD: Your Honor, the next exhibit I'd

1 like marked and identified as PCI Exhibit 7. It is a
2 33-page exhibit referencing applications and materials for
3 FM translator K257DB, Anchor Point, Soldovia, Alaska.

4 JUDGE SIPPEL: That's for K257 delta bravo?

5 MR. SOUTHMAYD: Correct.

6 JUDGE SIPPEL: The reporter will mark that for
7 identification at this time as PCI Exhibit 7 for
8 identification.

9 (The document referred to was
10 marked for identification as
11 PCI Exhibit No. 7.)

12 JUDGE SIPPEL: Any objections?

13 MR. SHOOK: None.

14 JUDGE SIPPEL: There being no objections, the 33
15 pages of PCI Exhibit 7 for identification are hereby
16 received in evidence as PCI Exhibit 7.

17 (The document referred to,
18 previously identified as PCI
19 Exhibit No. 7, was received in
20 evidence.)

21 JUDGE SIPPEL: Your next document?

22 MR. SOUTHMAYD: Your Honor, the next document I'd
23 like marked and identified as PCI Exhibit 8. It is a
24 14-page document concerning Peninsula FM translator 285AA,
25 Kodiak, Alaska.

(The document referred to was
marked for identification as
PCI Exhibit No. 8.)

MR. SOUTHMAYD: I would note that page 10 of the
exhibit is the same record of the grant of this STA as was
previously provided in connection with Exhibit 5, which was
Peninsula's other translator in Kodiak, Alaska, for which we
requested temporary authority. I ask that it be moved into
evidence.

JUDGE SIPPEL: The format is the same with respect
to --

MR. SOUTHMAYD: Correct, except for this
translator.

JUDGE SIPPEL: This one reflects DK285AA?

MR. SOUTHMAYD: Correct.

JUDGE SIPPEL: Any objection?

MR. SHOOK: Your Honor, I would lodge the same
objection to page 10 of PCI 8 as I had to its counterpart in
PCI 5. I understand Your Honor's ruling. It will probably
save some paper by not going further.

JUDGE SIPPEL: Okay. I will accept your arguments
as being substantially the same as the earlier arguments
made. My ruling will also be the same. Again, the question
of the weight to be afforded this page 10 of Exhibit 8 will
depend upon what's presented in proposed findings

1 The record is open until the day of the filing of
2 proposed findings with respect to any clarification
3 materials that are discovered with respect to page 10 of PCI
4 Exhibit 8.

5 Subject to those comments and rulings, PCI Exhibit
6 No. 8 for identification is hereby received into evidence as
7 PCI Exhibit 8.

8 (The document referred to,
9 previously identified as PCI
10 Exhibit No. 8, was received in
11 evidence.)

12 JUDGE SIPPEL: Your next exhibit?

13 MR. SOUTHMAYD: Your Honor, our final exhibit that
14 I ask be marked and identified as PCI Exhibit 9 is a two-
15 page document, a letter from the Federal Communications
16 Commission dated 18 February, 1992, concerning Peninsula's
17 two translators in Seward, Alaska.

18 JUDGE SIPPEL: The reporter will so identify that
19 two-page document for identification as PCI No. 9.

20 (The document referred to,
21 previously identified as PCI
22 Exhibit No. 9, was received in
23 evidence.)

24 JUDGE SIPPEL: Is there any objection?

25 MR. SHOOK: Yes, sir. Only to the extent that PCI

1 9 duplicates PCI 1-B, and it also duplicates Official Notice
2 Exhibit 5.

3 JUDGE SIPPEL: I've got the official notice of
4 exhibits with me, and it does duplicate Exhibit 5. Do you
5 want to comment on that, Mr. Southmayd?

6 MR. SOUTHMAYD: I was not sure whether Official
7 Notice 5 had been entered based on my notes, Your Honor.
8 Assuming it has been accepted as an exhibit, then there
9 would be no reason for this.

10 JUDGE SIPPEL: Okay. I hope it was received as an
11 exhibit.

12 MR. SOUTHMAYD: Okay.

13 JUDGE SIPPEL: If there is some question about
14 that, I don't see any problem with duplicating a two-page
15 letter.

16 I don't know. What is your position on this? I
17 mean, I know what your position is. You've stated it, Mr.
18 Shook. Can you shed any light on that?

19 MR. SHOOK: Your Honor, it's my understanding that
20 Official Notice Exhibit 5, as were all Official Notice
21 exhibits, was received. It's also my understanding that the
22 letter came in as Subpart B to PCI's Exhibit 1.

23 JUDGE SIPPEL: I'm going to check. Subpart B?

24 MR. SHOOK: I believe so.

25 JUDGE SIPPEL: Yes, it is. It's right here

1 Okay. I'm satisfied. It's in the record, so I'm going to
2 reject *PCI's* proposed Exhibit 9 as duplicative twice
3 removed.

4 (The document referred to,
5 having been previously marked
6 for identification as PCI
7 Exhibit No. 9, was rejected.)

8 JUDGE SIPPEL: Okay. Does that complete the
9 documents, Mr. Southrnayd?

10 MR. SOUTHMAYD: Yes, Your Honor.

11 JUDGE SIPPEL: Very well.

12 MR. SOUTHMAYD: I'll remove Exhibit 9 with Your
13 Honor's permission --

14 JUDGE SIPPEL: Please do.

15 MR. SOUTHMAYD: -- from the reporter's copy.

16 JUDGE SIPPEL: Is there any other business that
17 needs to be conducted today?

18 MR. SHOOK: Yes, sir. You had asked us to reach a
19 stipulation relative to EB Exhibit 23.

20 JUDGE SIPPEL: Thank you. Do you have one?

21 MR. SHOOK: We do, and it requires I guess a
22 little assistance from Your Honor to the extent that we have
23 material on the exhibit that I believe both of us find
24 acceptable, but as an additional measure of comfort to Mr.
25 Becker I also have no objection to the extent that this

document could be placed under seal in some fashion or
2 otherwise shielded from the public.

3 I anticipate that in our findings we will make
4 reference to some *of* the information that is here, but we
5 will not go into it to such an extent that it would be
6 absolutely necessary to have the exhibit itself available to
7 the general public. Frankly, all the public needs to know
8 relative to, you know, Peninsula's business is what we
9 choose to put in our findings.

10 JUDGE SIPPEL: All right. I'll tell you what
11 let's *do*. Let's leave it out *for* now. You can submit it to
12 me in camera with your proposed findings if you feel you
13 need it by that point. Maybe there's some way that you can
14 work around it.

15 MR. SHOOK: Right. It is conceivable that we will
16 make reference to very little of the material that is there.
17 This is simply designed to give one a picture of Peninsula's
18 business. We're still working through the process of
19 deciding how much of that we're really going to need when it
20 comes down to our findings.

21 JUDGE SIPPEL: Then we won't put it in the record.
22 Again, if you feel it's necessary in connection with your
23 findings you can submit it under separate cover to me in
24 camera with a motion that it be put on the record so that
25 Mr. Southrnayd can respond to it.

1 Hopefully the problem *is* going to disappear
2 between now and findings, but if it's still there I'll deal
3 with it at that time and we'll see. We'll try not to call
4 the reporter in to get that done, but we'll see what we have
5 to do. Okay. Is that it then?

6 MR. SHOOK: That's it as far as I know.

7 JUDGE SIPPEL: Mr. Southrnayd, is that it?

8 MR. SOUTHMAYD: Could I ask one question, Your
9 Honor?

10 JUDGE SIPPEL: Yes, sir.

11 MR. SOUTHMAYD: I don't know who, and I will
12 obviously address the Court, but do we have any idea? There
13 were some problems with the equipment during the hearing. I
14 was just wondering if there's any idea when the transcript
15 from the hearing is likely to surface.

16 THE REPORTER: As soon as possible.

17 JUDGE SIPPEL: As soon as possible. There you **go**.
18 When did we close? When did we close the record?

19 MR. SOUTHMAYD: September 26.

20 JUDGE SIPPEL: September 26? What is it? Let me
21 ask the reporter. Is it a ten-day turnaround time on the
22 transcript?

23 THE REPORTER: I think that was the order.

24 JUDGE SIPPEL: That's normally what it is, isn't
25 it?

THE REPORTER: Yes.

2 MR. SHOOK: Like Mr. Southmayd, the Bureau has not
3 seen copies of any transcript pages yet.

4 JUDGE SIPPEL: It should have been in last week
5 sometime. Yes. It should have come in last week sometime.
6 I'll have my office check on it and let you know.

7 MR. SOUTHMAYD: Thank you, Your Honor.

8 JUDGE SIPPEL: I don't think the reporter is going
9 to know. He wasn't here last time. We will check on that.
10 That's a good question.

11 I think that's it. I've already given the
12 instructions with respect to the dates on proposed findings.
13 That's in an Order. The hearing aspect of this case is
14 closed at this point. The record is open for certain things
15 that have been made clear to counsel.

16 We'll check on the status of the transcript. My
17 office will get in touch with both of you.

18 MR. SOUTHMAYD: Thank you.

19 MR. SHOOK: Thank you.

20 JUDGE SIPPEL: It's almost 11:00. The hearing is
21 completed. Thank you.

22 (Whereupon, at 11:00 a.m. the hearing in the
23 above-entitled matter was *concluded*.)

24 //

25 //

REPORTER'S CERTIFICATE

DOCKET NO.: 02-21
CASE TITLE: PENINSULA COMMUNICATIONS, INC
HEARING DATE: 10.16.02
LOCATION: Washington D.C. - F.C.C

I hereby certify that the proceedings and evidence are
contained fully and accurately on the tapes and notes
reported by me at the hearing in the above case before the

Federal Communication's Commission

Date: 10.16.02

K. Meagher

Official Reporter

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